

## Article IV. Specific Use Provisions

### Section 4.01 Specific Standards for Designated Uses

The following standards shall apply to the designated use in all zoning districts in which the respective uses are allowed. Such uses may be subject to conditional use review in accordance with Section 5.04. If there is a conflict between a standard in this section and a standard in another section of these regulations, the more restrictive standard shall apply.

### Section 4.02 Campers & Temporary Shelters

(A) It shall be unlawful for any person to park or erect a camper (travel trailer, recreation vehicle) or other temporary shelter (e.g., tent, tipi, yurt), except in an approved campground, an approved sales lot, or on a residential or undeveloped lot, subject to the following provisions.

(B) One camper or other temporary shelter may be parked on a residential lot (lot in which a dwelling is the principal use) provided that:

- a. it is not located within required setbacks for the district in which it is located;
- b. it is not occupied for dwelling purposes for more than 30 45? days within any one year period; and
- c. is not hooked up to a water system, septic system or other utilities unless permitted as a dwelling unit in accordance with these regulations.

(C) Any sewage generated by a camper or other temporary shelter shall be disposed of in accordance with all applicable local, state and federal regulations.

(D) Campers are permitted to be parked in approved campgrounds for temporary periods and on construction sites subject to the standards contained in Section 3.12.

### Section 4.03 Day Care Facilities

#### (A) Home Day Care.

(1) Home Child Care. In accordance with the Act [§4412(5)], a state registered or licensed child care home serving six or fewer children on a full-time basis and up to four additional children on a part-time basis which is conducted within a single-unit dwelling by a resident of that dwelling shall be considered a permitted use of the property. Such uses shall require a permit issued by the Zoning Administrator in accordance with Section 6.01.

(2) Home Adult Care. The care of eight or fewer persons which is conducted within a single-unit dwelling by a resident of that dwelling for less than 24 hours per day shall be considered a permitted use of the single-unit residence. Such uses shall require a permit issued by the Zoning Administrator in accordance with Section 6.01.

(3) Other Day Care Facilities. Any day care facility not covered under (1) or (2) above may be permitted in designated zoning districts in accordance with Article II. Such uses are subject to site plan review in accordance with Section 5.03, and to conditional use review under Section 5.04.

#### **Section 4.04 Sand & Gravel Extraction - Commercial**

(A) The extraction or removal of topsoil, sand, or gravel or other similar material for commercial purposes, except where incidental to any development lawfully undertaken in accordance with these regulations, may be permitted in designated districts subject to conditional use review under Article V and findings that the proposed operation will not:

1. cause any hazard to public health and safety, or
2. ~~adversely substantially or permanently impair the appropriate use or development of adjacent property, affect neighboring properties, property values, or public facilities and services, surface water and groundwater supplies, or natural, cultural, historic or scenic features.~~

(B) The application for a conditional use permit under Section 5.04 also shall include proposed erosion control and site restoration plans showing:

1. existing grades, drainage and depth to water table;
2. the extent and magnitude of the proposed operation including proposed project phasing; and
3. finished grades at the conclusion of the operation.

(C) In granting approval, the Development Review Board may, based on testimony, consider and impose conditions with regard to the following factors as it deems relevant:

1. depth of excavation or quarrying;
2. slopes created by removal;
3. effects on surface drainage on and off-site;
4. storage of equipment and stockpiling of materials on-site;
5. hours of operation for blasting, trucking, and processing operations;
6. effects on adjacent properties due to noise, dust, or vibration;
7. effects on traffic and road conditions, including potential physical damage to public highways;
8. creation of nuisances or safety hazards;
9. temporary and permanent erosion control;
10. effect on ground and surface water quality, and drinking water supplies;
11. effect on natural, cultural, historic, or scenic resources on-site or in the vicinity of the project;
12. effect on agricultural land; and
13. public safety and general welfare.

(D) A performance bond, escrow account, bank letter of credit, or other surety acceptable to the Town Manager may be required to ensure reclamation of the land upon completion of the

excavation, to include any re-grading, reseeded, reforestation or other reclamation activities that may be required.

(E) The processing of gravel extracted off-site, including crushing, storage and distribution, is only permitted within designated zoning districts as a defined use or as an accessory to another defined use (e.g. town highway facility), and is subject to Development Review Board approval as a conditional use in accordance with this Section and Section 5.04.

#### **Section 4.05 Excavation, Filling, and Storage of Material**

(A) The excavation, filling, or storage of more than 500 cubic yards of soil, sand, gravel or other similar material, except where required as part of any development lawfully undertaken in accordance with these regulations, may be permitted in any district subject to conditional use review under Section 5.04, and findings that the proposed operation:

1. **will not** cause any hazard to public health and safety;
2. **will not** adversely affect neighboring properties, public facilities and services, surface water and groundwater supplies, or natural, cultural, historic or scenic features, or other fragile features; or
3. **will**, if in the Flood Hazard Overlay District, comply with all provisions of Section 5.05.

(B) The application for a conditional use permit under Section 5.04 also shall include proposed erosion control and site restoration plans showing:

1. existing grades, drainage and depth to water table;
2. the extent and magnitude of the proposed operation including proposed project phasing; and
3. finished grades at the conclusion of the operation.

(C) In granting approval, the Development Review Board may consider and impose conditions with regard to the following factors as it deems relevant:

1. depth of excavation;
2. slopes created by removal or filling;
3. effects on surface drainage on and off-site;
4. storage of equipment and stockpiling of materials on-site;
5. hours of operation for blasting and trucking (See Section 3.09.);
6. effects on adjacent properties due to noise, dust, or vibration;
7. effects on traffic and road conditions, including potential physical damage to public highways;
8. creation of nuisances or safety hazards;
9. temporary and permanent erosion control;
10. effect on ground and surface water quality, and drinking water supplies;
11. effect on natural, cultural, historic, or scenic resources on-site or in the vicinity of the project;

12. effect on agricultural land;
13. public safety and general welfare; and
14. testing materials for contamination.

(D) The DRB may require a performance bond, escrow account, or other surety acceptable to the Town Manager to ensure reclamation of the land upon completion of the excavation, filing and storage to include any re-grading, re-seeding, reforestation or other reclamation activities that may be required.

#### **Section 4.06 Ponds**

(A) This section applies to small artificially created bodies of water capable of holding in excess of 24,000 cubic feet of water. (See Table 4.1).

(B) The construction of ponds may be permitted as an accessory use in accordance with Section 6.01 and subject to the following standards:

(1) The pond, including embankments, berms or other impoundment structures that exceeds the natural grade of the site, shall be outside of the required setbacks for the district (Article III, Table 3.2 and Article II, Table 2.8), except for applications submitted by more than one landowner where the pond will be sited on their common boundary line.

(2) The interior and exterior slopes of the earthen embankments of the pond shall be no steeper than 3:1 slope and preferably less steep.

(3) An erosion control plan compatible with the Vermont Handbook for Soil Erosion and Sediment Control shall be submitted with the application and maintained until the area is established.

(4) An auxiliary (emergency) spillway shall be located in natural soil and shall be adequate to pass a 100-year storm event through the auxiliary spillway without overtopping the dam. The auxiliary spillway shall discharge at a point well downstream of any embankments, berms or other impoundment structures. There should be a principal spillway or drain tube that will handle smaller flows and will allow the auxiliary spillway to remain dry during small storm events. (1 to 10 year frequency event.)

(5) The pond shall be constructed so as not to change direction, location or quantity of surface water flow upon other properties without the written permission of the affected property owners.

(6) A pond capable of impounding more than 75,000 cubic feet of water, that impounds water through the creation of an embankment, berm or other structure, and that is within 500 feet uphill from any town or state highway, any residential structure, or within 300 feet uphill from a boundary line, shall be designed and inspected by a licensed engineer. The design shall consider the impact on downstream properties vulnerable to water damage in case of dam failure.

(C) State or federal permits may be required for ponds impounding, or capable of impounding more than 500,000 cubic feet of water, pond construction that involves working in a stream that drains an area of 10 square miles or more, or a pond in or near a wetland.

**Table 4.1 - Pond Calculations**

<b>Volume</b>		<b>Max. Depth</b>	<b>Surface Area</b>	
Cubic Feet	Gallons		Square feet	Acres
24,000	179,520	6	10,000	0.23
24,000	179,520	9	6,667	0.16
24,000	179,520	12	5,000	0.12
75,000	561,000	6	31,250	0.73
75,000	561,000	9	20,833	0.49
75,000	561,000	12	15,625	0.37
500,000	3,740,000	6	208,333	4.90
500,000	3,740,000	9	138,889	3.26
500,000	3,740,000	12	104,167	2.45

**Section 4.07 Snow Removal to Off-site Location**

The removal of excess snow to an off-site location in any district may be allowed as a permitted use providing that the site receiving the snow is not within 50 feet of any stream, 75 feet of the Connecticut or Ompompanusuc rivers, or 500 feet of any residential structure unless the owner of the residential structure has given permission in writing. The proposed operation shall not cause any hazard to public health and safety, or neighboring properties, public facilities and services, surface water and groundwater supplies, or natural, cultural, historic or scenic features, or other fragile features.

**Section 4.08 Home Based Businesses (Home Occupations, Home Industries)**

In accordance with the Act [§4406(3)] no provision of these regulations shall prevent a person from using a minor portion of a dwelling for the conduct of an occupation which is customary in residential areas and which does not change the character of the surrounding area or neighborhood. To this end, the following categories of home-based businesses are allowed in accordance with the associated standards.

(A) **Home Office – no permit required.** No permit shall be required for a person using a small portion of their dwelling unit for a home business providing it meets the following standards:

- (1) The home office is conducted by residents of the dwelling unit and no more than one non-resident employee at any one time.
- (2) The home office is confined entirely to an area within the dwelling unit that occupies less than 50% of the floor area of the dwelling unit.
- (3) The home office does not involve the conduct of business with more than occasional on-site visits from clients or customers.
- (4) The home office does not involve the outside display or outside storage of goods, or signs related to the business.

(B) **Home Business – permit required.** A home occupation which violates one or more of the standards set forth in subsection (A) may be permitted with the approval of the Zoning Administrator in accordance with Section 6.01 and in accordance with the following provisions:

- (1) The home business occupies an area less than 50% of the floor area of a dwelling unit in either the dwelling unit or an accessory structure located on the same lot.
- (2) The home business is conducted by residents of the dwelling unit and involves not more than two non-resident employees at any one time.
- (3) The home business does not involve the storage or display of goods or equipment visible from the highway or from adjacent properties.

- (4) The home business does not change the residential character of the property or surrounding area.
- (5) Retail sales are not conducted, with the exception of the sale of goods and/or crafts created on the premises or retail sales that are incidental to the home business.
- (6) The aggregate of all home businesses in a single dwelling unit does not exceed restrictions (1) through (5).
- (7) The wholesaling of machinery or large items such as furniture, requiring occasional storage on the premises, other than inside the primary residence or accessory structure, is not a home business.
- (8) The zoning permit clearly states that the use is limited to a home business, approved in accordance with the above provisions, which is accessory to the residential use and shall be retained in common ownership and management. Any proposed expansion of the home business beyond that permitted will require a separate zoning permit for a home industry under this section, or other use as appropriate.
- (9) The home business meets the general conditions of Article III.
- (10) Off-street parking conforms with the standards of Section 3.0809.

(C) **Home Industry – Conditional Use approval required.** Home industries (as distinguished from Home Businesses) may be permitted in designated zoning districts, may include retail sales, and are subject to conditional use approval of the Development Review Board under Section 5.04 and the following provisions:

- (1) The owner and operator of the home industry resides on the lot.
- (2) The home industry occupies less than 50% of the floor area of a principal dwelling; or occupies an accessory structure located on the same lot as the principal dwelling, with the total area for retail uses not exceeding 100% of the finished floor area of the principal dwelling.
- (3) The home industry involves not more than five non-resident employees, at any one time.
- (4) The home industry does not involve the storage or display of goods or equipment visible from the highway or from adjacent properties unless specifically allowed in the permit. Exceptions may be made for goods compatible with the neighborhood such as nursery plants and shrubs.
- (5) The home industry does not change the residential character of the property or surrounding area.

(6) The home industry conforms to all performance standards under Article III. Storage of hazardous waste or materials shall comply with the Vermont Hazardous Waste Management Regulations.

(7) The home industry will not generate traffic, including but not limited to delivery truck traffic, in excess of volumes suitable for the neighborhood and all roads providing access to the site.

(8) The aggregate of all home industries in a single dwelling shall not exceed restrictions (1) through (7).

(9) The permit for a home industry shall clearly state that the industry is a home-based business which is accessory to the principal residential use, and shall be retained in common ownership and management. A home industry may be subdivided and/or converted for sale or use apart from the residential use only if it meets all current municipal and state regulations pertaining to such use, including density, dimensional, and other requirements for the district in which it is located. Separate permits shall be required as appropriate prior to subdivision, sale and/or conversion.

(10) Off-street parking conforms with the standards of Section 3.09.

#### **Section 4.09 Mixed Uses**

(A) **The Village Business District and the Commercial Industrial District.** More than one use may be permitted within a single building or on a single lot subject to conditional use review in accordance with Section 5.03 and the following provisions:

(1) Each of the proposed uses is otherwise allowed as a permitted or conditional use in the district in which the mixed use is proposed.

(2) The combined uses meet all applicable standards for the district in which the mixed use is proposed, including minimum setbacks and frontage, maximum lot coverage and minimum lot size.

(3) The mixed use meets all applicable general provisions contained in Article III, including parking requirements under Section 3.09 based on the cumulative parking demand for the various proposed uses.

#### **Section 4.10 Mobile Home Parks**

(A) Mobile Home Parks may be permitted in the Rural Residential District subject to PUD review in accordance with Section 5.06 and the following provisions:

(1) Proposed parks comply with the requirements of 10 V.S.A. Chapter 153.

- (2) Proposed parks comply with all applicable state and local laws, ordinances and regulations relating to water supply and waste disposal.
  - (3) Each mobile home is located on a dedicated site of not less than 8,000 square feet in area.
  - (4) All roads within a mobile home park comply with Town road standards, and adequate walkways are provided.
  - (5) Parking is provided in accordance with Section 3.09.
  - (6) A minimum of 25% of the total land area in any mobile home park is set aside for common recreational use or open space.
  - (7) All mobile home parks meet minimum setback requirements from the perimeter boundary for the districts in which they are located. Setback areas shall not be included in the calculation of recreation land or open space under Subsection (7).
- (B) An increase in the number of units; changes or alterations to park area, design, layout or common facilities are subject to conditional use review in accordance with the above provisions. Changes or alterations to individual mobile home sites or mobile homes within the park (e.g., the addition of a porch, deck or accessory structure serving the residents of the dwelling), shall be allowed in the same manner as changes or alterations to a single unit dwelling.

#### **Section 4.11 Public Facilities**

- (A) In accordance with the Act [§4413(a)], the following public facilities or uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping and screening requirements, and only to the extent that such regulations do not have the effect of excluding or interfering with the intended use or function:
- 1. state or community owned and operated institutions and facilities;
  - 2. public and private schools and other educational institutions with a curriculum approved by the Vermont Department of Education;
  - 3. churches and other places of worship, convents, monasteries, and parish houses;
  - 4. public and private hospitals;
  - 5. regional solid waste management facilities certified by the state (under 10 V.S.A. Chapter 159); or
  - 6. hazardous waste management facilities for which a notice of intent to construct has been received by the state (under 10 V.S.A. §6606a).
- (B) Reasonable provision has been made for siting of the above public facilities and uses within all zoning districts. Such facilities or uses must meet applicable district requirements, and shall be subject to conditional use review under Section 5.02; however, associated conditions of approval shall not exceed allowed regulation, as specified in the Act and Subsection (A).

(C) In accordance with the Act [§4413(b)], public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 V.S.A. §248) are specifically exempted from municipal land use regulations.

#### **Section 4.12 Cultural Facilities**

(A) A cultural facility uses land and/or structures to encourage and promote community, visual or performing arts, or educational goals, which use is available to, and intended for, the benefit of the general public. Examples include a school, library, museum, performing arts center, or community center.

(1) A community use means functioning as a social or activity center for town, community or school organizations or gatherings, which may include amenities such as meeting rooms, large gathering or activity rooms, kitchen facilities, an auditorium, playgrounds or sports fields.

(2) An educational use will include academic learning or studies, or training in visual or performing arts, through classes, seminars or similar learning opportunities taking place at the property.

(B) A cultural facility is not intended to include:

(1) State or community-owned and operated institutions and facilities, or public and private schools and other educational institutions certified by the state department of education. See 24 V.S.A. §4413.

(2) Social or fraternal clubs or membership organizations.

(3) Offices for organizations that only promote or encourage cultural activities which take place in another location.

(C) A cultural facility is a conditional use in all zoning districts and shall meet all applicable general provisions contained in Article III.

(D) With the exception of educational uses, which shall meet the minimum off-street parking requirements for educational facilities, all other cultural facilities must meet the minimum off-street parking requirements for places of public assembly. See Table 3.3.

### Section 4.13 Telecommunications Facilities

(A) **Introduction.** Technological developments in the telecommunications and broadcast industries have resulted in demands for development of property to accommodate these land uses. Wireless communication facilities have become increasingly important to the security and economic needs of residents and businesses in the Town. This trend will continue, creating new opportunities for commerce and reducing demand for travel by conventional modes. Given the potential impacts these facilities may have on the public good, safety and welfare of Norwich citizens, it is in the Town's interest to plan for and regulate the orderly development of such facilities.

(B) **Purpose.** The purpose of this section shall be to regulate the placement, design, construction and modifications of wireless communication facilities so as to promote the economic viability of the Town and to protect its historic, cultural, natural, and aesthetic resources.

(C) **Conditional Use Approval for Wireless Communication Facilities.** Pursuant to T 24 §4412(9), the Zoning Administrator shall review telecommunications facilities applications, and upon determining that a particular application will impose no impact or de minimis impact upon any criteria established in these regulations, shall approve the application. No permit for the development of a wireless communication facility shall be granted by the Zoning Administrator without conditional use approval from the Development Review Board. Prior to granting such approval, the Board shall make affirmative findings for each of the following criteria in addition to the other applicable provisions set forth in these Regulations:

- a. Yard Requirements - Equipment, buildings, and other structures shall conform to the minimum front, side, and rear setbacks for the district in which they are located.
- b. Height Limitations - The height of towers, antenna, and tower related fixtures in all districts shall not exceed the minimum height necessary to achieve the coverage objective and, in any case, be no greater than 20 feet above the average height of the tree line within 100 feet of the base of the tower. Notwithstanding the above, additional height may be approved upon finding by the Board that it is necessary to provide adequate coverage, or to accomplish co-location as outlined in Subsection 4.13(I) below and does not have an undue adverse visual impact on scenic or natural beauty as outlined in Subsection 4.13(K) below.

(D) **Setbacks.** All wireless communications facilities shall comply with the setback provisions of the zoning districts in which facilities are located. Notwithstanding the above, in order to ensure public safety, the minimum distance of any ground mounted wireless service facility to any property line, dwelling, or similar structure shall be no less than the height of the tower, including antennas or vertical appurtenances. This setback shall be referred to as a fall zone. In the event that an existing structure such as a barn silo, church steeple, or utility pole is proposed as a mounting for a telecommunications facility, a fall zone setback shall not be required.

(E) **Lighting.** No lighting shall be permitted on towers, except as may be specifically required by FAA regulations or where deemed necessary by the Board. In any case where a tower is determined to need FAA obstruction marking or lighting, applicants must seek the least visually obtrusive marking and/or lighting scheme in their FAA applications. Emergency, safety or security ground lighting may be utilized when there are people at the site. All tower lighting incidental to the tower shall be shielded to minimize glare. To the extent reasonable, all ground lighting shall be directed downward towards the facility and not towards neighboring properties.

(F) **Bulk, Height, and Glare.** All wireless facilities shall be designed in such a manner as to minimize the visual impact of height, mass, and guy wire supports for the intended use. Materials utilized for the exterior of any structure shall be of a type, style, and location so as to minimize glare and not result in an undue adverse visible impact on any scenic or historic viewshed, public vantage point or from abutting properties.

(G) **Screening.** Screening shall be required at the perimeter of the site unless it can be demonstrated that natural foliage is adequate. A planted or natural vegetative screen shall be a minimum of 10 feet in depth with a minimum height of 10 feet and shall provide year-round screening. Existing on-site vegetation outside the site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized, unless the disturbance is demonstrated to result in less visual impact of the wireless facility on surrounding properties and areas.

(H) **Signs and Fencing.** Adequate warning signs and fencing shall be installed as needed to protect the public and at minimum shall meet federal requirements. Fencing shall be chosen to minimize visual impact, consistent with its intended safety purpose.

(I) **Co-location.**

(1) An application for a new telecommunications tower shall not be approved unless the Development Review Board finds that the telecommunications facilities planned for the proposed tower cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:

- a. The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer licensed to practice in the State of Vermont and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.
- b. The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer licensed to practice in the State of Vermont and such interference cannot be prevented at a reasonable cost.

- c. The proposed antennas and equipment, alone or together with existing facilities, equipment or antennas, would create radio frequency interference (RFI) in violation of federal standards or requirements.
- d. The proposed antennas and equipment, either alone or together with existing facilities, equipment or antennas, would create radio frequency radiation (RFR) in violation of federal standards or requirements without unreasonable modification or mitigation measures.
- e. Existing or approved towers and structures cannot accommodate, or be reasonably modified to accommodate, the planned equipment at a height necessary to function reasonably or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer licensed to practice in the State of Vermont.
- f. Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
- g. Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

(2) Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights when overall permitted height allows. Towers shall be designed structurally, electrically and in all respects to accommodate both the applicant's antennas and additional antennas when overall permitted height allows.

(3) The owner of an approved wireless communication facility shall allow other wireless service providers to co-locate on the tower subject to reasonable terms and conditions. Notwithstanding, there shall be no affirmative obligation on the owner to increase the height or width of the tower in order to accommodate the equipment or facilities of another user.

**(J) Access Roads and Above Ground Utilities.** Where new wireless communication facilities require construction of or improvement to access roads, to the extent practicable, roads shall follow the contour of the land. Access roads, when consistent with the purposes of this section and economically feasible, shall be constructed or improved within existing forest or forest fringe areas and not in open fields. Utility or service lines shall be designed and located so as to minimize disruption to the scenic character or beauty of the area.

(K) **Protection of Scenic Ridges, Views and Hillides.** Proposed facilities, particularly those located in the Ridgeline Protection Overlay District, shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. When the Board, after consultation with the Zoning Administrator and the applicant, determines that a proposed wireless facility will likely be visible against the skyline from at least one vantage point from any public park, natural scenic vista, historic building or district, or major view corridor or from a State highway or Class 1 or II highway, or at least two vantage points on a Class III town highway at no less than 1,000 feet apart, or at least three vantage points at no less than 1,000 feet apart on a Class IV town highway, a public trail, the Connecticut River, or the Ompompanoosuc River, the applicant shall prepare a report identifying the duration for which the tower would be visible to a passing traveler in feet and the distance to the proposed facility from the vantage points. The Board may require the report to include the elevation of the ground level of the facility site, the average elevation of vegetation within 100 feet of the facility within the affected viewshed, the slope of the facility site, the vertical height of the facility, appropriate design measures and recommendations to minimize any impact on scenic quality. Height and mass of facilities shall not exceed that which is essential for its intended use and public safety.

(1) To assist the Board in its review of a likely visual impact of proposed facility under this sub-section, the Board may require the applicant to fly or raise a three foot diameter balloon at the maximum height of the proposed facility at a location within 50 horizontal feet of the center of the proposed facility. The applicants shall provide at least seven days written notice to the Board of the date and time of the test. The applicant shall provide to the Board photographs of the balloon test taken from at least four vantage points.

(2) Upon review of the applicant's report, supporting materials, testimony from the parties, and inspections from the designated vantage points, the Board shall determine whether or not the proposed tower does not have an undue adverse visual impact on the scenic or natural beauty of the land proposed to be developed as viewed from public highways or water bodies within the Town.

(3) Where a tower would break or cross the skyline when viewed from the identified vantage points, in order to approve the application the Board may designate an alternative location for the tower to be evaluated by the applicant. In consideration of this, the applicant may revise its application to include such a site, assuming it is available to the applicant and reasonably technically feasible to meet the applicant's signal coverage objectives.

(4) For the purposes of this Subsection, a wireless facility shall be considered likely to be visible against the skyline when the structure is more than eight inches wide or in diameter where it intersects the tree line or forest canopy.

(5) In determining whether or not a tower would have an undue adverse visual impact on the scenic or natural beauty of a ridge or hillside, the Board shall consider:

1. the period of time during which the proposed tower would be viewed by the traveling public on a public highway, public trail, the Connecticut River or the Ompompanoosuc River;
2. the frequency of the view of the proposed tower as experienced by the traveling public;
3. the degree to which the view of the tower is screened by existing vegetation, the topography of the land, and existing structures;
4. background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
5. the distance of the proposed tower from the viewing vantage point and the proportion of the facility that is visible above the skyline;
6. the number of vehicles traveling on a public highway or water at or near the critical vantage point;
7. the sensitivity or unique value of the particular view affected by the proposed tower; and
8. the proposed type(s) of antenna, mounting hardware, and covers (radomes), which extend above the tree line.

(L) **Innovative Siting Techniques.** The Board may waive any of the requirements of Section 4.13(G) for the purpose of approving the development of a wireless communication facility utilizing innovative siting techniques that camouflage or conceal the presence of antennas or towers. These techniques may include the use of existing complying or non-complying structures or new complying structures to contain or support antennas.

(M) **Interference with Public Safety Telecommunications.** All applications for new telecommunications facilities shall be accompanied by an intermodulation study by a qualified engineer licensed to practice in the State of Vermont that predicts no likely interference problems and certification that the study has been provided to the appropriate public safety agencies. Before testing or operating new service or changes in existing service, telecommunications providers shall notify the municipality at least 10 calendar days in advance of such changes and allow the municipality to monitor interference levels during that testing process.

(N) **Conditions.** The Board shall have the authority to impose conditions consistent with the purpose of Section 4.13 in approving a proposed plan for the development of a wireless communication facility. A Notice of Decision with conditions shall be promptly recorded or filed with the Town by the Development Review Board or Administrative Officer. It shall be the obligation of the permittees and subsequent assigns to remain in compliance with all conditions.

(O) **Application Requirements.** As required under this Section, an application shall include at least the following information prepared by a qualified engineer licensed to practice in the State of Vermont:

- (1) Name and address of the record landowners and any duly appointed agents of the parties;
- (2) Names and addresses of the record owners of all abutting property;

- (3) A map or sketch of the property proposed to be developed, professionally drawn to scale and with the area to be developed clearly indicated;
  - (4) A description of the proposed development;
  - (5) The location of the proposed structure on a USGS Topographic Map, Survey with a 20 foot contour interval, or a GIS generated map compatible with the Norwich GIS;
  - (6) A utility and access road plan located on a USGS Topographic Map or a GIS generated map compatible with the Norwich GIS;
  - (7) Where the facility is located on a parcel that is forested, the approximate average height of the existing vegetation within 100 feet of the tower;
  - (8) A design or plan for all structures, buildings, access roads, or facilities proposed for the site, including landscaping and screening, existing vegetation to be retained, exterior lighting, and drainage and erosion control plans;
  - (9) The locations of all existing and proposed wireless service facilities in Norwich or within 20 miles of the site for all licensed carriers seeking approval under the application;
  - (10) To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, an Environmental Impact Assessment (EIA) draft or final report outlining the probable impacts of the proposed facility on wildlife habitats, endangered species, historic and archeological resources, wetlands, and other resources; and
  - (11) Any additional information deemed necessary by the Board to make findings based on the criteria in Section 4.13.
- (P) **Provision for Independent Consultants.** To assist the Board in its review of applications for Conditional Use Approval under this section, the Board may employ or contract with consultants whose services shall be paid for by the applicant. Any or all final reports or documents prepared by the consultant shall be made available to the applicant and other parties to the proceeding.
- (Q) **Amendments.** An amendment to a prior approved wireless communications facility may be considered by the Board and shall require Conditional Use Approval from the Board when any of the following are proposed:

1. a change in the number of facilities permitted on the site;
2. changes in technology used for the facility that would increase the total RFR at the site; or
3. addition of any equipment or additional height not specified in the original application.

(R) **Fees.** A schedule of fees for wireless communications facilities to cover permitting and monitoring costs shall be established by the Norwich Selectboard and may from time to time be amended.

(S) **Abandoned, Unused, Obsolete, Damaged or Dangerous Towers or Portions of Towers.** Abandoned or unused towers or portions of towers and their facilities shall be removed as follows:

(1) The owner of a facility/tower shall annually, on January 15, file a declaration with the Town of Norwich Zoning Administrator certifying the continuing safe operation of every facility/tower installed subject to these regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and considered abandoned.

(2) Abandoned or unused towers and associated facilities shall be removed within 180 days of cessation of operations at the site unless a time extension is approved by the Development Review Board. In the event the tower is not removed within 180 days of the cessation of operations at a site, the municipality shall notify the owner and may remove the tower and all associated facilities. Costs of removal shall be assessed against the property or tower owner.

(3) Unused portions of towers shall be removed within 180 days of the time that such portion is no longer used for antennas. The replacement of portions of a tower previously removed requires the issuance of a new telecommunications facility permit.

(4) An owner who has failed to file an annual declaration with the Zoning Administrator by January 15 may, within 30 days of an abandonment notice being issued by the Zoning Administrator, file a declaration of use or intended use and may request the ability to continue use of the facility/tower.

(5) As a condition of approval, the Board may require the applicant to provide a performance bond or similar form of surety payable to the Town in an amount sufficient to cover the full costs of removal of a tower and antenna in the event that the facility is declared abandoned.

(T) **Continuing Obligations.** Upon receiving a permit, the permittee shall annually demonstrate that he or she is in compliance with all FCC standards and requirements regarding RFR, and provide the basis for his or her representations. The permittee shall provide a list of the most recent RFR readings at the site, their distances from the tower/transmitter, dates of the readings and the name of the person or company who took the readings. A survey by another permittee on the same site, since it will demonstrate compliance of all emitters, may be submitted provided there is annual demonstration of site compliance.

(U) **Consistency with Federal Law.** These regulations are intended to be consistent with Section 704 of the 4.1096 Telecommunications Act. Accordingly, they shall not prohibit or have the effect of prohibiting the provision of personal wireless communications services; shall not unreasonably discriminate among providers of functionally equivalent services; and shall not regulate personal wireless services based on the environmental effects of radio frequency emissions to the extent that these facilities comply with Federal Communications Commission Regulations concerning such emissions.

#### Section 4.14 Accessory Dwellings & Detached Apartments

(A) **Accessory Dwellings.** There shall be only one principal dwelling structure per residential lot; however, one accessory dwelling structure with one dwelling unit may be approved, ~~subject to conditional use review as a permitted use~~ for a lot on which a single unit dwelling is the principal use. Accessory dwellings shall satisfy the following requirements: ~~in addition to the conditional use criteria in Section 5.03. Site Plan Review will not be required:~~

(1) The accessory dwelling shall meet all setback and other dimensional requirements for the district in which it is located or, for an existing non-complying structure, the change to an accessory dwelling will in no way increase the degree of noncompliance.

(2) The accessory dwelling shall be located in the same area of the lot as the principal dwelling to create a clustered development.

(3) The accessory dwelling and the principal dwelling shall be located within the same approved existing or new development envelope. A new development envelope shall be created if needed using the criteria in Section 5.07.

(4) The floor area of the accessory dwelling shall not exceed ~~50% of the floor area of the principal dwelling, or~~ 1,600 square feet of finished habitable floor space.., whichever is less.

(5) There shall be adequate off-street parking for the residents of both the principal dwelling and the accessory dwelling as required in Section 3.09.

(6) The permit for the accessory dwelling shall clearly state that the dwelling is an accessory structure to the single family residence and shall be retained in same ownership.

(7) Only the principal dwelling or the accessory dwelling may be rented at one time. The owner may apply to the Zoning Administrator for up to a one year occupancy exemption. This restriction shall be acknowledged by the applicant and be included in any deed transferring ownership of the property.

(B) **Detached Apartments.** There shall be only one principal dwelling structure per residential lot; however, one apartment in an existing accessory structure may be approved as a permitted use for a lot on which a single unit dwelling is the principal use and there are no additional dwelling units. Detached apartments shall satisfy the following requirements:

- (1) The existing accessory structure must have been built in its current location ~~as of January 1, 2007, or~~ at least 10 years prior to the issuing of a permit for a detached apartment ~~whichever is later.~~
  - (2) The existing accessory structure shall meet all setback and other dimensional requirements for the district in which it is located or, for an existing non-complying structure, the addition of a detached apartment will in no way increase the degree of noncompliance.
  - (3) The floor area of the detached apartment shall not exceed 30% of the floor area of the principal dwelling, or 1,200 square feet, whichever is less. ??
  - (4) There shall be adequate off-street parking for the residents of both the principal dwelling and the detached apartment as required in Section 3.09.
  - (5) The permit for the detached apartment shall clearly state that the dwelling is an accessory structure to the single family residence.
  - (6) Only the principal dwelling or the detached apartment may be rented at one time. The owner may apply to the Zoning Administrator for up to a one year occupancy exemption. This restriction shall be acknowledged by the applicant and be included in any deed transferring ownership of the property.
- (C) **Maximum Number of Dwelling Units.** The maximum number of dwelling units on a single lot is two without PUD approval.

#### Section 4.15 Small Wind Energy Systems

Small wind energy systems are allowed on any lot in any district as an accessory use subject to the limitations in this Section.

- (A) **Permitted Use.** A small wind energy system with one tower with a tower height of less than 100 feet.
- (B) **Conditional Use.** A small wind energy system with one or more towers with tower heights of 100 feet or more may be permitted subject to conditional use review under Section 5.04. In addition to the standards in Section 4.15 (D), the Development Review Board shall find that:
  1. the requested height of the tower does not exceed what is reasonably necessary to provide efficient operation of the system; and
  2. all reasonable measures have been taken to minimize any undue adverse visual impact of the system.
- (C) **Expiration and Abandonment.**

- a. A permit issued pursuant to this Section shall expire if the small wind energy system is out-of-service or otherwise unused for a continuous 12-month period.
- b. A small wind energy system that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Administrator may issue a Notice of Abandonment to the owner of a small wind energy system that is deemed to have been abandoned. The Owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. The Administrator shall withdraw the Notice of Abandonment and notify the Owner that the Notice has been withdrawn if the Owner provides information that demonstrates the small wind energy system has not been abandoned.
- c. If the small wind energy system is determined to be abandoned, the owner of a small wind energy system shall remove the wind generator from the tower at the Owner's sole expense within 3 months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Administrator may pursue a legal action to have the wind generator removed at the Owner's expense.

(D) **Standards for Small Wind Energy Systems.** All small wind energy systems shall conform to the following standards:

- a. Performance standards in Section 3.10.
- b. Setbacks. A wind tower for a small wind system shall be set back a distance equal or greater to the Small Wind Energy System Height from:
  - i) any public road right of way, unless written permission is granted by the governmental entity with jurisdiction over the road;
  - ii) any overhead utility lines; and
  - iii) all property lines.
- c. The rated capacity of the system shall not substantially exceed the on-site electric usage of the end-user.

(E) **Definitions that Apply to Small Wind Energy Systems.**

**Small Wind Energy System:** A wind energy conversion system consisting of a wind turbine, a tower and associated control or conversion electronics, which has a rated capacity appropriate to the on-site electric usage of the end-user and is not interconnected with the electric utility system.

**Small Wind Energy System Height:** The tower height plus the blade length.

**Tower Height:** The height above grade of the fixed portion of the tower, excluding the wind turbine and blades.

**Turbine:** The parts of a wind system including the blades, generator and tail.